IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17093 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

U.N.MEHTA HEART HOSPITAL VARG-IV KARMACHARI UNION

Versus

ASST. COMMISSIONER OF LABOUR AND CONCILIATION OFFICER

Appearance:

1. Special Civil Application No. 17093 of 2004
MR TR MISHRA for Petitioner No. 1
MR KL PANDYA AGP for Respondent No. 1
MR CHIRAG M PAWAR with
MR PS CHARI for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 01/03/2005

ORAL JUDGEMENT

1. Rule. Present petition is preferred against the order dated 9-7-2004 passed by the respondent No. 1, whereby the Reference u/s 10 of the Industrial Disputes Act, 1974 is denied, mainly on the ground that the dispute has not been espoused by 15% of total workmen, working with the employer.

2. Learned advocate for the petitioner submitted that there is no mathematical percentage fixed by the Industrial Disputes Act, 1947 (hereinafter referred to a "the I.D. Act"). It is submitted by the learned advocate for the petitioner that the dispute raised by the petitioner is espoused by sizable number of workmen and 15% fixed by the respondent No. 1 - Assistant Commissioner of Labour and Reconciliation Officer is dehors to the provisions of the I.D. Act and as per Annexure-C calculation of support of number of workmen to the industrial dispute raised by the petitioner itself is in dispute. The Assistant Commissioner of Labour and Reconciliation Officer has wrongly arrived at a conclusion that there is support of 11.11% of workmen to the industrial dispute and the respondent No.4 should decide, a fresh the process of making reference within stipulated time as may be given by this Court after hearing both the parties.

3. I have heard the learned A.G.P. for the respondent No.1. He has submitted that the dispute raised by the petitioner union is supported by only 11.11% out of total workmen of the respondent No.2 and they are less than 15% of the total workmen and as the dispute raised by the petitioner union is not supported by sizable number of workmen the order passed by the respondent No. 1 is true, correct and in consonance with the facts and law.

4. Looking to the facts and circumstances of the case, the dispute raised by the petitioner union at Annexure-A to the present compilation, is supported by sizable number of workmen, the order passed by the Assistant Commissioner of Labour dated 9-7-2004 is hereby quashed and set aside for the following reasons:

i. Dispute raised by the petitioner union which is in the form of demand ought to have been supported by the sizable number of the workmen. Sizable number of

workmen are not mathematically fixed by the I.D. Act.

ii. Individual dispute is not an industrial dispute but when the individual dispute is supported by sizable number of workmen working in the industry, it becomes an industrial dispute. The question, therefore, is what is "sizable number of workmen?

Sizable number of workmen depends upon number or figure of workmen. Sometimes percentage of total workmen espousing the cause may be less, but, total number of workmen espousing the cause may be more, that all depends upon total strength of workmen in the industry. For finding out support by sizable number of persons, the Conciliation Officer ought not to have seen percentage of total workmen supporting the cause/dispute. Statistics is not always helpful, sometimes it can even misguide. Instead of percentage, actual strength of workmen ought to be found out by the Conciliation Officer, who are supporting the industrial dispute.

iii. Under the I.D. Act, if the dispute raised by the union is supported by the sizable number of workmen, reference ought to have been made by the Conciliation Officer if the demands or grievances of the workmen are not accepted by the employer. Sizable number of workmen depends upon the facts and circumstances of each case. Mathematical fixation of percentage is dehors to the provisions of the I.D. Act. If sizable number of workman have supported the case and the demands of the petitioner union, the dispute ought to have been referred by conciliation officer, u/s 10 of the I.D. Act to the concerned court. It may happen that percentage of the workmen may be lesser if total number of workmen are many more. Percentage is statistic and statistic as envisaged in the order of the respondent No.1 is legally not tenable. The demand raised by the

petitioner ought to have been supported by sizable number of the workmen. Percentage depends upon total strength of the employees. The total number of members of the petitioner union in the present case is also disputed before the Conciliation Officer as per Annexure-C to the present compilation.

iv. It is to be kept in mind by the Appropriate Government while deciding under Section 10 of the Industrial Disputes Act, 1947 the industrial dispute should be referred to the labour court concerned or not, and, that dispute is in existence or apprehended, then reference ought to have been made, as held by the Supreme Court in the case of Telco Convoy Driver's Mazdoor Sangh Vs. State of Bihar reported in 1989 (2) LLJ 558, that "the formation of opinion as to whether an industrial dispute 'exists or is apprehended" does not mean to adjudicate the dispute. Relevant part of para 7 thereof reads as under :

"para 7 .... the information of opinion as to whether an industrial dispute 'exists or is apprehended' is not the same thing as to adjudicate the dispute itself on its merits and in performing the administrative function, the Government cannot delve into the merits of the dispute and take upon itself the determination of the lis. It is also observed by Their Lordships in the same judgment that "there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference. Further, the Government should be very slow to attempt an examination of the demand with a view to declining reference and Courts will always be vigilant whenever the Government attempts to usurp the powers of the Tribunal for adjudication of the valid disputes, and to allow the Government to do so would be to render Sec.10 and Sec,12(5) of the Act

nugatory."

Of course, as held by the Supreme Court in its decision in the case of Jitendra Nath Biswas V. M/s. Empire of India & Ceylone Tea Co., reported in AIR 1990 SC 255, "a prima facie examination of the merits cannot be said to be foreign to the enquiry which the appropriate Government is entitled to make in dealing with a dispute u/s 10 (1). "

Learned A.G.P. for the State has relied upon the judgment delivered by the Apex Court in the case of the Secretary, Indian Tea Association V. Ajit Kumar Barat, reported in 2000 AIR SCW 507. It is submitted by the learned A.G.P. that if there no an industrial dispute, no reference can be made by the appropriate Government u/s 10 of the I. D. Act, 1947. But this judgment is not helpful in the present case. During "reference making process" the appropriate Government cannot adjudicate the whole dispute. Existence of the industrial dispute in the present case is highly disputed question and it is a mixed question of facts and law both. When the individual dispute is converted into an industrial dispute, the same is to be decided by the labour court concerned. In the present case, what percentage of workmen should espouse the dispute of the individual for its conversion into an industrial dispute is such a vital point that it should be left open for the concerned Labour Court to decide. But if prima facie, sizable number of workmen are espousing the cause of individual, the industrial dispute should be referred to the Labour/Industrial Court. In fact, there is no such provisions in the Industrial Disputes Act, 1947 for finding out the support of the workmen in percentage to an individual disputes for its conversion into an industrial dispute. Thus, in the present case the appropriate Government has not considered the relevant and germane facts for

ascertaining whether there is existence of an industrial dispute or not, and therefore, the impugned order passed by the appropriate Government in the present case deserves to be quashed and set aside.

v. Prima-facie the order passed by the respondent No.1 at Annexure-A and Annexure-B are dehors of the I.D. Act.

5. Learned advocate for the petitioner union has relied on various cases decided by the various courts :

i. 2001 (C) G.L.R. 639.

ii. 2004-III LLJ 930 (Bombay High Court)

iii. 2005 LLR 112 (Decided by Division Bench of the Bombay High Court.

6. Learned advocate for the petitioner also submitted that the aforesaid judgments ought to have been kept in mind by the respondent No.1 while passing the aforesaid order.

7. Looking to the facts and circumstances of the case and the reasons stated hereinabove, I direct the respondent No. 1 to decide afresh, a Reference making process by affording opportunity of hearing to the petitioner as well as the respondent No. 2 in accordance with law, as early as possible and practicable and preferably within a period of four weeks from the date of receipt of the writ of this Court. Rule is made absolute to the aforesaid extent, with no order as to costs.

(D.N. Patel, J.)

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